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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 ARMANDO M. REYES,

9 *Petitioner,*

10 vs.

11 UNITED STATES OF AMERICA,

12 *Respondent.*
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3:11-cv-00043-LRH-RAM

ORDER

14 This *pro se* prisoner matter comes before the Court for initial review. Petitioner has filed a
15 paper styled as a “Renewed Motion for Final Disposition on United States Marshal Detainer, Pursuant
16 to Article III, Agreement on Detainers.”

17 Petitioner’s papers are subject to multiple substantial defects.

18 First, petitioner may not proceed against the sole respondent named, the United States of
19 America. Federal sovereign immunity insulates the United States from suit in the absence of an express
20 waiver of this immunity by Congress. *See, e.g., Robinson v. United States*, 586 F.3d 683, 685 (9th Cir.
21 2009).

22 Second, the conclusory papers presented fail to state a claim upon which relief may be granted.
23 Petitioner apparently is proceeding on the assumption that he merely needs to “renew” the motion that
24 he filed in a prior action, No. 3:10-cv-00750-RCJ-RAM, that was dismissed without prejudice for lack
25 of either a filing fee or pauper application. This assumption is incorrect. The prior action was
26 dismissed. If petitioner commences a new action, he must file entirely new papers in the new action
27 without relying on papers filed in a prior action. The present conclusory papers fail to state a claim for
28 relief.

1 Third, petitioner must commence a civil action with a petition or complaint. He may not
2 commence a civil action with a motion.

3 Fourth, petitioner has submitted a pauper application based upon a \$5.00 filing fee. The Court
4 is not persuaded, however, that a \$5.00 filing fee applies to the present action. The order in No. 3:10-
5 cv-00750 referred to the papers in the prior action as presenting a “petition for a writ of habeas corpus
6 filed pursuant to 28 U.S.C. § 2254.” The order further stated that petitioner “must either submit the
7 \$5.00 filing fee for habeas petitions” or a pauper application. However, a motion for disposition of a
8 United States detainer clearly does not arise under § 2254, which is directed to custody under state
9 process. Petitioner is seeking not release from custody but instead final disposition on a federal
10 detainer, and petitioner otherwise has not invoked habeas jurisdiction in his papers. If anything, the
11 matter would appear to sound more in the nature of a mandamus action than a habeas action. Petitioner,
12 in all events, has not invoked habeas jurisdiction. *See also Castro v. United States*, 540 U.S. 375, 385-
13 88, 124 S.Ct. 786, 793-95, 157 L.Ed.2d 778 (2003)(Scalia, J., concurring in part)(noting that courts
14 should not recharacterize pleadings to override the *pro se* litigant’s chosen procedural vehicle for his
15 claim, given the potential unforeseen prejudice that can accrue to the litigant).

16 Under 28 U.S.C. § 1914(a), the filing fee for “any civil action, suit or proceeding . . . whether
17 by original process, removal or otherwise,” except for an application for a writ of habeas corpus, is
18 \$350.00. Petitioner did not file an application for a writ of habeas corpus in this Court; he filed a
19 motion for final disposition of a federal detainer. The filing fee in this matter therefore is \$350.00.
20 Moreover, the payment of the \$350.00 filing fee is subject to the requirements of the Prisoner Litigation
21 Reform Act in 28 U.S.C. § 1915, including the requirement that petitioner pay the full \$350.00 fee in
22 installments even if he currently is not able to pay the entire fee.

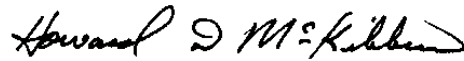
23 The tendered pauper application, which is based instead upon a \$5.00 filing fee, therefore would
24 appear to be deficient.

25 Given the multiple defects presented, which are not limited to the pauper application, the action
26 will be dismissed without prejudice.

27 IT THEREFORE IS ORDERED that this action shall be DISMISSED without prejudice to a
28 properly commenced new action.

1 The Clerk of Court shall enter final judgment accordingly, dismissing this action without
2 prejudice.¹

3 DATED this 24th day of January, 2011.
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7 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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27 ¹ The Court expresses no opinion at this juncture as to whether petitioner is proceeding in the proper federal
28 court. If petitioner in fact is seeking an immediate disposition on an underlying federal charge, it would appear under
the Interstate Agreement on Detainers that he must seek relief in the charging jurisdiction itself, following appropriate
prior written notice to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction.